

No. 443

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

WILLIAM J. BRYAN, JESSE D. CARR,
WILLIAM MATTHEWS, HENRY
MILLER and WM. F. HERRIN; A.
N. DROWN and VANDERLYN
STOW, as Executors of the Last Will
of W. W. Stow, Deceased,

Plaintiffs in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendants in Error.

TRANSCRIPT OF RECORD.

Error to the Circuit Court of the United States
for the Northern District of California.

FILED

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United States Circuit Court of Appeals for the Ninth Circuit.

WILLIAM J. BRYAN, et al.,
Plaintiffs in Error,
vs.
THE UNITED STATES OF AMERICA,
Defendant in Error.

Stipulation as to Printing of Record.

It is hereby stipulated and agreed by and between counsel for the plaintiffs in error and defendant in error that the following portions of the transcript of record on appeal may be omitted by the clerk of this court in the printing thereof, viz:

The original answer, pages 23 to 28, inclusive.

Order sustaining demurrer to answer, page 32.

Bond on writ of error, pages 64 to 66, inclusive.

Motion to strike out parts of amended answer, pages 43 to 44, inclusive.

Order allowing plaintiff to amend complaint, page 31.

Summons, pages 12 to 14, inclusive.

Demurrer to answer, pages 29 and 30, inclusive.

Citations.

April 28, 1898.

JOHN T. CAREY,

Counsel for Plaintiffs in Error.

SAMUEL KNIGHT,

Counsel for Defendant in Error.

[Endorsed]: Filed April 28, 1898. F. D. Monckton,
Clerk.

*In the Circuit Court of the United States, Ninth Circuit,
Northern District of California.*

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILLIAM J. BRYAN, JESSE D.
CARR, WILLIAM MATTHEWS,
WILLIAM W. STOW, and HENRY
MILLER,

Defendants.

No. 11,791.

Complaint.

The United States of America, by Charles A. Garter, Esq., its attorney, complains of William J. Bryan, Jesse D. Carr, William Matthews, William W. Stow, and Henry Miller, the above-named defendants, and for cause of complaint alleges as follows:

For that, heretofore, said defendant William J. Bryan, as principal, and Jesse D. Carr, William Matthews, William W. Stew, and Henry Miller, as sureties, to-wit, on the fourteenth day of July, in the year of our Lord one thousand eight hundred and eighty-six, at the city and county of San Francisco, in the State and Northern District of California, by their certain writing obligatory duly signed by them and sealed with their seals, dated on the said fourteenth day of July, one thousand eight hundred and eighty-six, a true and correct copy whereof,

duly authenticated with the seal of the auditor's office of the Treasury Department of the said United States for the Postoffice Department, sealed thereto, and the signature of T. B. Coulter, Sixth Auditor and Auditor of the Treasury for Postoffice Department, signed thereto (the said original bond being on file in auditor's office), is now shown the Court, have acknowledged themselves to be held and firmly bound, jointly and severally, unto this United States in the just and full sum of three hundred thousand dollars, to be paid to the said plaintiff, which said writing obligatory was and is subject to a certain condition therein written, in substance to the effect following: That whereas, the said William J. Bryan was postmaster at San Francisco, State and District aforesaid, it was conditioned, among other things, that if the said William J. Bryan should faithfully discharge all the duties and trusts imposed on him, either by law or the rules or regulations of the Postoffice Department, and faithfully, once in three months, or oftener if thereto required, render accounts of his receipts and expenditures as postmaster to the Postoffice Department, in the manner and form prescribed by the Postmaster General, in his several instructions to postmasters, and should pay the balance of all moneys that should come to his hands from postage collected, postage stamps, and stamped envelopes sold, or money orders issued by him, or from any other source connected with the postal service, in the manner prescribed by the Postmaster General of the United States, for the time being, and should keep safely, without loaning, using, depositing in other banks, or exchanging for other funds than as allowed by law, all the public money collected by him, or otherwise at any time placed in his

possession and custody, till the same is ordered by the Postmaster General to be transferred or paid out; and when such orders for transfer for payment are received, should faithfully and promptly make the same as directed, and should also faithfully do and perform, as agent and depositary for the Postoffice Department, all such acts and things as might be required of him by the Postmaster General; and, moreover, should faithfully account with the United States, in the manner directed by the said Postmaster General, for all moneys, postage stamps, stamped envelopes, postal cards, bills, bonds, notes, drafts, receipts, vouchers, money orders, blanks, mail keys, maps, and other property and papers which he, the postmaster, or as agent and depositary as aforesaid, should receive for the use and benefit of the said Postoffice Department, then the said obligation should be void; otherwise of force. And it was further expressly agreed and stipulated that in case the said William J. Bryan, postmaster, should, during his term of office, execute a new bond with different sureties, all the parties to the said obligation should be held and bound for all charges against the said postmaster up to the end of the quarter during which such new bond should be executed; and the acceptance of such new bond, whenever the same might be signified by the Postmaster General, should date from the last day of such quarter, as by a copy of the said writing obligatory hereto attached marked Exhibit "A," and made part of this declaration, will more fully appear.

And the said plaintiff alleges that the said William J. Bryan was postmaster at San Francisco, in the State and Northern District of California, from and including the twenty-first day of June, in the year of our Lord one thou-

sand eight hundred and eighty-six, to and including the thirtieth day of June, one thousand eight hundred and ninety.

That the said office was and is the office referred to in and for which said bond was given as hereinbefore recited.

And the said plaintiff further avers that the said William J. Bryan did not well and faithfully execute and discharge the duties and trusts imposed on him as such postmaster, either by law or the rules and regulations of the Postoffice Department, and did not once in three months or oftener, when required, faithfully or otherwise render an account of his receipts and expenditures as such postmaster to the Postoffice Department in the manner and form prescribed by the Postmaster General in his several instructions to postmasters, and did not pay the balance of all moneys that came into his hands in the manner prescribed by the Postmaster General of the United States for the time being or otherwise.

And the said plaintiff assigns as a breach of the conditions of the said writing obligatory that the said William J. Bryan, while he was postmaster as aforesaid, did from time to time in his official capacity as such postmaster, collect and receive divers sum of money on his money-order account, for which he neglected to render his account to the Postoffice Department in the manner and form or otherwise as prescribed by law; which sums of money so received on his money-order account, and not accounted for as aforesaid on the thirtieth day of June, one thousand eight hundred and ninety, amounted to the sum of nine thousand three hundred and ninety-nine dollars and eighty-eight cents, and that the said William J. Bryan, on

the said thirtieth day of June, one thousand eight hundred and ninety, did not, nor has he at any time since, paid said sum of nine thousand three hundred and ninety-nine dollars and eighty-eight cents, or any part thereof.

That the official accounts of the said William J. Bryan, as such postmaster, under his official bond or writing obligatory, were on the thirtieth day of April, one thousand eight hundred and ninety-two, adjusted at the Treasury Department of the United States, in conformity with law and the rules and regulations of the said Department made in pursuance of law. Whereby the said sum of or balance of nine thousand three hundred and ninety-nine dollars and eighty-eight cents has been ascertained and reported to be due to the United States from said William J. Bryan, postmaster as aforesaid. By means of which said breach of said writing obligatory as hereinbefore signed and set forth an action hath accrued to the said plaintiff to have and demand of and from the said defendants, hereinbefore mentioned, the said sum of nine thousand three hundred and ninety-nine dollars and eighty-eight cents.

That the sum herein last mentioned has been demanded by plaintiff from the said defendants, but that they have utterly neglected and refused to pay the same or any part thereof.

And the said plaintiff further alleges that the said defendants are residents of the Northern District of California.

Wherefore, plaintiff became and is entitled to and so demands judgment against the said defendants for the sum of nine thousand three hundred and ninety-nine dollars and eighty-eight cents, together with lawful interest

thereon from the thirtieth day of April, one thousand eight hundred and ninety-two, and costs of suit.

(Signed) CHARLES A. GARTER,
United States Attorney.

Exhibit "A."

CERTIFICATE TO COPY OF BOND.

Chief Clerk, }
Form 1026. }

Exhibit "A." Office of the Auditor of the Treasury
For the Postoffice Department.

I, T. B. Coulter, Auditor of the Treasury for the Post-office Department, do hereby certify the annexed to be a true and correct copy of the original bond, dated July 14, 1886, of William J. Bryan, late postmaster at San Francisco, in the State of California, pertaining to his accounts in the office of the Sixth Auditor of the Treasury.

In testimony whereof, I have hereunto signed my name, and caused to be affixed my seal of office, at the city of Washington, this twelfth day of April, in the year of our Lord one thousand eight hundred and ninety-three.

[Seal]

T. B. COULTER,

Sixth Auditor and Auditor of the Treasury for the Post-office Department.

Presidential Confirmation.

(No, 1116, Series of July, 1883.)

Read the Directions before Signing.

Insert the names of the sureties in full in the body of the bond, and place of residence; also the date. The signatures to the bond should be witnessed, and the certifi-

cate on the inside should be signed by a justice of the peace, adding his official title, or if signed by a notary public, mayor, or judge, he should affix his seal. Correct the name of the postmaster if wrongly written. His first name should be signed in full.

Know All Men by These Presents, That we, William J. Bryan, of San Francisco, in the county of San Francisco, State of California, and Jesse D. Carr, of Salinas, Monterey county, State of California, and William Matthews, William W. Stow, and Henry Miller, of the city and county of San Francisco, State of California, are held and firmly bound unto the United States of America in the just and full sum of three hundred (\$300,000) thousand dollars; for the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

In witness whereof, we have hereunto subscribed our names and affixed our seals this fourteenth day of July, in the year of our Lord one thousand eight hundred and eighty-six.

Whereas, the above-bounden William J. Bryan was appointed postmaster at San Francisco, as aforesaid, on the 21 day of June, 1886, by and with the advice and consent of the Senate of the United States.

Now, the condition of this obligation is such, that if the said William J. Bryan shall faithfully discharge all the duties and trusts imposed on him either by law or the rules and regulations of the Postoffice Department and faithfully, once in three months, or oftener if thereto required, render accounts of his receipts and expenditures,

as postmaster, to the Postoffice Department, in the manner and form prescribed by the Postmaster General, and shall pay the balance of all moneys that shall come into his hands, from postage collected, postage stamps, and stamped envelopes sold, or money orders issued by him, of from any other source connected with the postal service, in the manner prescribed by the Postmaster General for the time being, and shall keep safely, without loaning, using, depositing in other banks or exchanging for other funds than as allowed by law, all the public money collected by him, or otherwise at any time placed in his possession and custody, till the same is ordered by the Postmaster General to be transferred or paid out; and when such orders for transfer or payment are received, shall faithfully and promptly make the same as directed; and shall also faithfully do and perform all of the duties and obligations imposed upon or required of him by law or the rules and regulations of the Department, in connection with the money-order business; and shall also faithfully do and perform, as agent and depositary, for the Postoffice Department, all such acts and things as may be required of him by the Postmaster General; and moreover, shall faithfully account with the United States, in the manner directed by the said Postmaster General, for all moneys, postage stamps, stamped envelopes, postal cards, bills, bonds, notes, drafts, receipts vouchers, money orders, blanks, mail keys, maps, and other property and papers which he, as postmaster, or as agent and depositary as aforesaid, shall receive for the use and benefit of the said Postoffice Department, then the above obligations shall be void; otherwise, of force. And it is hereby expressly agreed and stipulated that in case the

said William J. Bryan, postmaster, shall, during his term of office, execute a new bond with different sureties, all the parties to the above obligation shall be held and bound for all charges against the said postmaster up to the end of the quarter during which such new bond shall be executed; and the acceptance of such new bond, whenever the same may be signified by the Postmaster General, shall date from the last day of such quarter.

Witness to the Signatures:

Firmin Nippert. Holland Smith.	P. M. WILLIAM J. BRYAN.	[Seal]
Firmin Nippert. Holland Smith.	JESSE D. CARR.	[Seal]
Firmin Nippert. Holland Smith	WILLIAM MATTHEWS.	[Seal]
James P. Langhorne. Holland Smith.	WILLIAM W. STOW.	[Seal]
Firmin Nippert. Holland Smith.	HENRY MILLER.	[Seal]

City and County of San Francisco. }
 State of California. } ss.

I hereby certify that Jesse D. Carr, of Salinas, Monterey county California, and William Matthews, William W. Stow, and Henry Miller, the sureties above-named, and who have signed the foregoing bond, are responsible and sufficient to insure the payment of double the entire penalty named therein.

Witness my hand this 14 day of July, A. D. 1886.

[Seal]

HOLLAND SMITH, J. P.,

Notary Public in and for the City and County of San Francisco, State of California.

State of California, }
City and County of San Francisco. } ss.

Jesse D. Carr, of Salinas, Monterey county, California, and William Matthews, William W. Stow, and Henry Miller, sureties, being duly sworn, depose and say, and each for himself deposes and says, he has executed the within bond, and that his place of residence is correctly stated therein; that he is a freeholder of said State, and that he is worth the sum here set against his name, over and above all debts and liabilities existing against him, and, also, over and above whatever property the laws of the State exempt from levy or sale, the total sum thus assured amounting to six hundred (\$600,000) thousand dollars.

Figures here.

JESSE D. CARR,	\$200,000
WILLIAM MATTHEWS,	100,000
WILLIAM W. STOW,	100,000
HENRY MILLER,	200,000

Subscribed and sworn before me this 14 day of July, 1886.

HOLLAND SMITH,

Notary Public in and for the City and County of San Francisco, State of California.

Postmaster's Oath.

This Oath must be Executed by the Postmaster at the Time of Execution of Bond.

I, William J. Bryan, having been appointed postmaster at the city and county of San Francisco, and State of Cali-

fornia, do solemnly swear (or affirm) that I will faithfully perform all the duties required of me, and abstain from everything forbidden by the laws in relation to the establishment of postoffices and post roads within the United States; and that I will honestly and truly account for and pay over any moneys belonging to the said United States which may come into my possession or control; and I also further swear (or affirm) that I will support the Constitution of the United States: So Help Me God.

WILLIAM J. BRYAN, P M.

Sworn before me, the subscriber, a notary public in and for the city and county of San Francisco, this 14th day of July, A. D. 1886; and I certify that, to the best of my knowledge and belief, the person above named is of an age at which he is competent to contract by deed under the laws of this State.

HOLLAND SMITH,

Notary Public in and for the City and County of San Francisco, State of California.

Note.—This oath must be taken before a justice of the peace, mayor, judge, notary public, clerk of a court of record competent to administer an oath, or any officer, civil or military holding a commission under the United States and if the oath is taken before an officer having an official seal, such seal should be affixed to his certificate.

Two hundred thousand dollars.

One hundred thousand dollars.

One hundred thousand dollars.

Two hundred thousand dollars.

*In the Circuit Court of the United States, Ninth Circuit
Northern District of California.*

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILLIAM J. BRYAN, JESSE D. CARR,
WILLIAM MATTHEWS,
WILLIAM W. STOW, and HENRY MILLER,

Defendants.

No. 11,791

Demurrer.

Now comes William J. Bryan, Jesse D. Carr, William Matthews, William W. Stow, and Henry Miller, defendants in the above-entitled cause, by their attorney, John T. Carey, Esq., and appear in said cause and file this, their demurrer to the complaint on file herein, and demur to said complaint upon the grounds following, to-wit:

I.

That said complaint does not state facts sufficient to constitute a cause of action.

II.

That said complaint is uncertain in this, that it cannot be ascertained therefrom whether the breach alleged is for failing to render accounts in manner and form as required by law or for failing to pay over moneys that came into defendant Bryan's hands as postmaster.

III.

That said complaint is uncertain in this, that it cannot be ascertained therefrom whether the moneys alleged to be due are for postal revenues, postage collected, postage stamps, stamped envelopes sold or for money orders issued by defendant Bryan as postmaster.

Wherefore, defendants pray that said complaint may be dismissed, that they and each of them may go hence without day, and that they may have and recover their costs in this behalf expended.

JOHN T. CAREY,
Attorney for Defendants.

United States of America,
State and Northern District of California. } ss.

William J. Bryan, one of the defendants named in the foregoing demurrer, being duly sworn, deposes and says that the foregoing demurrer is not interposed to delay the said cause or any proceeding therein.

Subscribed and sworn to before me this 14th day of December, 1894.

I hereby certify that I am attorney for the defendants in the above-entitled action, and that in my opinion the foregoing demurrer is well founded in point of law, and proper to be filed in the said cause.

Dated this 14th day of December, 1894.

JOHN T. CAREY,

Attorney for Defendants.

[Endorsed]: Filed Dec. 14, 1894. W. J. Costigan, Clerk. By W. B. Beazley, Deputy Clerk.

At a stated term, to-wit, the February term, A. D. 1895, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California, held at the courtroom in the city and county of San Francisco, on Wednesday, the 26th day of June, in the year of our Lord one thousand eight hundred and ninety-five.

Present: The Honorable JOSEPH McKENNA, Circuit Judge.

UNITED STATES,

vs.

WM. J. BRYAN et al.

} No. 11,791.

Order Granting Leave to File an Amended² Declaration.¹

Upon motion of Samuel Knight, Esq., Assistant United States Attorney, and upon suggestion of the death of W. W. Stow, one of the defendants herein, ordered that plaintiff have leave to file an amended declaration.

At a stated term, to-wit the July term, A. D. 1895, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California, held at the courtroom in the city and county of San Francisco, on Thursday, the 1st day of August, in the year of our Lord one thousand eight hundred and ninety-five.

Present: The Honorable JOSEPH McKENNA, Circuit Judge.

UNITED STATES.	}	No. 11,791.
vs.		
WM. J. BRYAN et al.		

Order Substituting Vanderlyn Stow, A. N. Drown, and W. F. Herrin, Defendants, in Place of W. W. Stow, Dec'd.

Upon motion of Samuel Knight, Esq., Assistant United States Attorney, it is ordered that Vanderlyn Stow, A. N. Drown, and W. F. Herrin, executors of the last will and testament of William W. Stow, deceased be, and they hereby are, substituted as defendants herein in place and stead of said William W. Stow, deceased. And it is further ordered that a writ of scire facias issue herein, directing the said Vanderlyn Stow, A. N. Drown, and W. F. Herrin, executors as aforesaid, to appear and answer herein, within twenty days after service of said writ.

*In the Circuit Court of the United States, Ninth Circuit,
Northern District of California.*

THE UNITED STATES OF AMER-
ICA,

Plaintiff,

vs.

WILLIAM J. BRYAN, JESSE D.
CARR, WILLIAM MATTHEWS, and
HENRY MILLER and VANDER-
LYN STOW, A. N. DROWN and W.
F. HERRIN, as Executors of the Last
Will and Testament of William W.
Stow, Deceased,

Defendants.

Writ of Scire Facias.

To the United States Marshal for the Northern District
of California :

Whereas, it appears by the records of the court above-
named that the United States of America commenced an
action against the said William J. Bryan, Jesse D. Carr,
William Matthews, Henry Miller, and William W. Stow
on the 22d day of April, 1893, for the recovery of the sum
of nine thousand three hundred and ninety-nine dollars
and eighty-eight cents, together with lawful interest
thereon from the thirtieth day of April, one thousand
eight hundred and ninety-two, and costs of suit, which

said sum was claimed by said plaintiff to be due it by reason of a breach of a certain bond to the said plaintiff made and executed by said William J. Bryan, as principal, and said Jesse D. Carr, William Matthews, Henry Miller and William W. Stow, as sureties thereof; and

Whereas, it appears that since the filing of said declaration of complaint in said action, to-wit, on the 11th day of February, 1895, the said William W. Stow died, and such proceedings were thereafter duly had in the Superior Court of the city and county of San Francisco, in said State and Northern District of California, that on the 5th day of March, 1895, letters testamentary were issued to said Vanderlyn Stow, A. N. Drown, and W. F. Herrin, the executors named in the last will and testament of said deceased, who thereupon qualified as such, and ever since have been and now are the duly appointed, qualified, and acting executors as aforesaid; and

Whereas, it appears by the records of this court in said cause that on the 1st day of August, 1895, an order was duly made by the Judge of this court, substituting the said Vanderlyn Stow, A. N. Drown, and W. F. Herrin as executors as aforesaid, as parties defendant in said cause in the place and stead of said William W. Stow, deceased;

Now, therefore, you are hereby commanded to forthwith serve upon said Vanderlyn Stow, A. N. Drown, and W. F. Herrin, executors as aforesaid, this writ, commanding them to appear and answer in said cause within twenty days from and after the service of this writ; otherwise judgment will be taken and entered against them as prayed for in the complaint filed herein, and of this writ you will make speedy service and due return.

Witness, the Honorable MELVILLE W. FULLER,
Chief Justice of the United States, this 1st day of August,
A. D. 1895.

[Seal]

W. J. COSTIGAN,
Clerk.

By W. B. Beaizley,
Deputy Clerk.

United States Marshal's Office, }
Northern District of California. }

I hereby certify that I received the within writ on the
5th day of August, 1895, and personally served the same
on 7th day of November, 1895, on A. N. Drown, by deliver-
ing to and leaving with A. N. Drown, said defendant
named therein, personally, at the city and county of San
Francisco, in said District, a certified copy thereof.

San Francisco, November 8th, 1895. .

BARRY BALDWIN,
U. S. Marshal.
By T. J. Gallagher,
Deputy.

United States Marshal's Office, }
Northern District of California. }

I hereby certify that I received the within writ on the
5th day of August, 1895, and personally served the same
on the 6th day of August, 1895, on Vanderlyn Stow and
W. F. Herrin, by delivering to and leaving with Vander-
lyn Stow and W. F. Herrin, said defendants named there-

in, personally, at the city and county of San Francisco, in said District, a certified copy thereof.

San Francisco, August 6th, 1895.

BARRY BALDWIN,

U. S. Marshal.

By T. J. Gallagher,

Deputy.

[Endorsed]: Filed November 8th, 1895. W. J. Costigan, Clerk.

At a stated term, to-wit, the November term, A. D. 1897, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California, held at the courtroom in the city and county of San Francisco, on Monday, the 27th day of January, in the year of our Lord one thousand eight hundred and ninety-six.

Present: The Honorable JAMES H. BEATTY, District Judge, District of Idaho, assigned to hold and holding Circuit Court for this District.

THE UNITED STATES	} No. 11,791.
vs.	
WM. J. BRYAN et al.	

Order Overruling Demurrer to Declaration.

The defendant's demurrer to plaintiff's complaint herein, heretofore submitted, and having been fully considered, it is ordered that said demurrer be, and the same hereby is, overruled, with leave to the defendants to answer herein within ten days.

*In the Circuit Court of the United States, Ninth Circuit
Northern District of California.*

THE UNITED STATES OF AMER-	} Plaintiff,
ICA,	
vs.	
WILLIAM J. BRYAN et al.,	
	Defendants.

Amended Answer.

By leave of the Court first had and obtained, defendants file this amended answer, and for answer to the complaint on file herein in the above-entitled action, defendants William J. Bryan, Jesse D. Carr, William Matthews, Henry Miller, and Wm. F. Herrin, A. N. Drown and Vanderlyn Stow, executors of the last will of W. W. Stow, heretofore substituted herein as defendants in place of W. W. Stow, deceased, make the following admission and denials and averments by way of denials and defense:

I.

Defendants admit the execution and delivery of the bond attached to and marked Exhibit "A" and made a part of the complaint herein, in the manner and at the time, for the amount, for the purpose, and upon the conditions as alleged in the complaint.

II.

Defendants admit that William J. Bryan was postmaster at San Francisco, State and Northern District of California, from and including the 21st day of June, 1886, to and including the 30th day of June, 1890.

III.

Defendants admit that the said office, to-wit, postmaster of San Francisco, State and Northern District of California, was and is the office referred to in and for which said bond was given.

IV.

Defendants deny that said William J. Bryan did not well or faithfully exercise or discharge the duties or trusts imposed upon him as such postmaster, either by law or the rules or regulations of the Postoffice Department; deny that said William J. Bryan did not once in three months, or oftener when required, faithfully, or otherwise, render an account of his receipts and expenditures as such postmaster, to the Postoffice Department, in the manner and form prescribed by the Postmaster General, in his several instructions to postmasters.

Defendants deny that said William J. Bryan did not pay the balance of all moneys that came into his hands on money order account in the manner prescribed by the Postmaster General; but, on the contrary, defendants aver that said William J. Bryan well and truly and faithfully exercised and discharged all the duties and trusts imposed on him as such Postmaster either by law or the

rules and regulations of the Postoffice Department, and did faithfully render an account of his receipts and expenditures as such postmaster to the Postoffice Department, in the manner and form prescribed by the Postmaster General, in his several instructions to postmasters, and did pay to the United States all moneys that came into his hands, on his money order accounts, in the manner and form prescribed by law and the rules and regulations of the Postmaster General to postmasters.

V.

These defendants deny that William J. Bryan, while he was postmaster at San Francisco, State and Northern District of California, in breach of the conditions of said bond, or from time to time, or at all, in his official capacity as such postmaster, or at all, did collect or receive divers or any sums of money on his money order account, or at all, for which he neglected to render his accounts to the Postoffice Department, in the manner and form, or manner or form prescribed by law, or at all; but, on the contrary, defendants aver that said defendant William J. Bryan accounted for and paid over to the United States, all money received by him, on his money order account, while postmaster aforesaid, and faithfully accounted for all money orders which he, as postmaster or agent, as aforesaid, received, for the use and benefit of the said Postoffice Department.

VI.

Defendants admit that on the 3d day of June, 1890, there was due the United States, upon the money order

account at the postoffice at San Francisco, State and Northern District of California, the sum of nine thousand three hundred and ninety-nine and 88-100 (9,399.88) dollars; and defendants further admit that said William J. Bryan did not at the date last aforesaid, nor has he at any time since, paid said sum or any part thereof; but in this connection and by way of defense to this action, these defendants aver that one James S. Kennedy, during the early part of the year 1890 was, and for several years prior thereto had been, a clerk in the postoffice at San Francisco, State and Northern District of California; that he took and held such office under the Civil Service Laws of the United States and the rules and regulations adopted pursuant to said law governing the appointment, promotion, and tenure of said office, and as such clerk had charge of the money order accounts and money order funds of said postoffice.

That said James S. Kennedy, between the 5th day of January, A. D. 1890, and the 15th day of March, A. D. 1890, received, collected, embezzled, and converted to his own use, divers sums of the money order funds of said postoffice, which said sums of money so received, collected, embezzled, and converted to his own use amounted to the sum of nine thousand three hundred and ninety-nine and 88-100 (9,399.88) dollars, which said sum and money order funds are the same for which this suit is brought against defendants herein. That said Kennedy was, on the 8th day of April, 1890, indicted by the United States Grand Jury, in and for the United States District Court, for the Northern District of California, for said offense, and thereafter on the 13th day of May, A. D. 1890, was convicted of said crime. That defendant, William J.

Bryan, as postmaster aforesaid, used all the diligence and supervisory care over said clerk that a prudent, painstaking chief officer could over a subordinate officer, to protect the United States, and to secure the faithful discharge of his duties as such clerk, and had no knowledge or intimation of the misappropriation of said money order funds by said Kennedy until after said crime had been consummated; nor did said Bryan at any time receive, nor has he yet received, said money order funds or any part thereof so misappropriated, stolen, and embezzled by said Kennedy.

VI.

That said money order funds so embezzled and misappropriated by the said Kennedy was lost to the United States without the fault or negligence of defendant, William J. Bryan.

VIII.

That the business and work of the international money order desk in the postoffice at San Francisco, State of California, from the time defendant William J. Bryan assumed the duties of postmaster of said postoffice, up to the time said moneys were embezzled and misappropriated by said Kennedy had increased nearly one hundred per cent, and the clerical force was entirely inadequate to keep up the work of the money order fund department to meet the requirements of the rules and regulations of the Postoffice Department, of which fact the Postmaster General was from time to time advised, and defendant William J. Bryan, as postmaster aforesaid from time to

time within eighteen months prior to the embezzlement of said funds, made frequent and urgent appeals to the Postmaster General for additional clerical help at said international money order desk; but to heed or grant said applications the Postoffice Department failed, neglected, and refused until after said Kennedy had discovered the means and opportunity of misappropriating money order funds handled by him without the probability of being detected. That had the department furnished or permitted the employment of an adequate clerical force to keep up the work of the international money order desk at said postoffice in the manner and form required by the Rules and Regulations of the Postoffice Department, the said Kennedy could not have stolen and embezzled said funds or any part of them without immediate detection.

IX.

That said Kennedy, under the Rules and Regulations of the Postoffice Department, was in the custody and charge of the money order funds of the international money order desk in said postoffice at the time said funds were embezzled by him as aforesaid, and never came into the hands of defendant Bryan as postmaster or otherwise.

X.

That the postoffice inspectors appointed by the Postoffice Department at Washington, pursuant to their duties in that behalf, had inspected the money order department of the postoffice at San Francisco, California, but a short time before the discovery of the embezzlement committed by Kennedy as hereinbefore alleged, but

failed to discover said embezzlement or any defalcation at his desk or in said money order department.

XI.

These defendants deny that a cause of action therefor accrued to the United States to have and demand of and from said defendant or either of them the said sum of nine thousand three hundred and ninety-nine and 88-100 (9,399.88) dollars, or any sum whatever.

Wherefore, defendants, having fully answered plaintiff's complaint herein, pray that they and each of them may go hence without day. And defendant William J. Bryan further prays the judgment of the Court that the said money order funds were embezzled and lost to the United States without his fault or negligence; and that the Court decree that he may be credited on his money order account as postmaster in the sum of nine thousand three hundred and ninety-nine and 88-100 (9,399.88) and the accrued interest thereon.

PAGE, McCUTCHEN & EELLS, and
JOHN T. CAREY,

Attorneys for Defendant.

REUBEN H. LLOYD,
Of Counsel.

State of California,
City and County of San Francisco. } ss.

Wm. J. Bryan, being duly sworn, deposes and says that he is one of the defendants in the above-entitled action; that he has read the foregoing amended answer and

knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated on his information or belief, and as to those matters that he believes it to be true.

WM. J. BRYAN.

Subscribed and sworn to before me this 3d day of November, 1897.

[Seal]

P. J. KENNEDY,

Notary Public in and for the City and County of San Francisco, State of California.

Service of a copy of the within amended answer is hereby admitted this 3d day of November, 1897.

SAMUEL KNIGHT,

Asst. U. S. Attorney.

[Endorsed]: Filed November 3d, 1897. Southard Hoffman, Clerk.

*In the Circuit Court of the United States, Ninth Circuit,
Northern District of California.*

THE UNITED STATES OF AMER-
ICA,

Plaintiff,

vs.

WILLIAM J. BRYAN et al.,

Defendants.

Demurrer to Amended Answer.

And now comes the plaintiff above-named and demurs to the amended answer on file herein, and for cause of such demurrer alleges:

I.

That said amended answer does not state facts sufficient to constitute a defense to the cause of action in plaintiff's complaint contained.

II.

That said amended answer does not state facts sufficient to constitute a counterclaim to the cause of action in plaintiff's complaint contained.

Wherefore, plaintiff prays that its said demurrer be sustained, and that judgment be rendered and entered in its favor for the amount set forth in the complaint, interest thereon and costs hereof.

SAMUEL KNIGHT,
Assistant U. S. Attorney.

Certificate.

I hereby certify that in my opinion, as counsel, the foregoing demurrer is well founded in point of law.

SAMUEL KNIGHT,

Assistant U. S. Attorney.

Service of the within demurrer by copy admitted this 5th day of November, 1897.

PAGE, McCUTCHEEN & EELLS,

J. T. CAREY,

Attorneys for Defendants.

[Endorsed]: Filed November 9, 1897. Southard Hoffman, Clerk. By W. B. Beazley, Deputy Clerk.

In the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs

WILLIAM J. BRYAN et al.,

Defendants.

No. 11,791.

Findings.

This cause came on to be heard on the 29th day of November, 1897, upon the demurrer of the plaintiff to the amended answer of the defendants, and was argued by

counsel for the respective parties, and submitted to the Court for consideration and decision. And the same having been fully considered, and said demurrer having been sustained, the Court now finds the issues of fact herein in favor of the plaintiff, and, as a conclusion of law therefrom, that plaintiff is entitled to a judgment herein against the defendants in accordance with the prayer of the complaint.

Let judgment be entered herein accordingly, with costs.

Dated November 30th, 1897.

W. W. MORROW,
Circuit Judge.

In the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs .

WILLIAM J. BRYAN, JESSE D. CARR, WILLIAM MATTHEWS, HENRY MILLER, and WILLIAM F. HERRIN, A. N. DROWN, and VANDERLYN STOW, as Executors of the Last Will of W. W. Stow, Deceased,

Defendants.

No. 11,791.

Judgment.

In this cause the Court having sustained the demurrer of plaintiff to the amended answer of the defendants, and ordered that findings be filed and judgment entered herein in favor of the plaintiff in accordance with the prayer of its complaint herein; and the findings of the Court having been this day filed herein:

Now, therefore, by virtue of the law, and by reason of the findings aforesaid, it is considered by the court that the United States of America, plaintiff, do have and recover of and from William J. Bryan, Jesse D. Carr, Wil-

ing papers hereto annexed constitute the judgment roll in the above-entitled action.

Attest my hand and the seal of said Circuit Court this 30th day of November, 1897.

[Seal]

SOUTHARD HOFFMAN,

Clerk.

By W. B. Beaizley,

Deputy Clerk.

[Endorsed]: Filed Nov. 30, 1897. Southard Hoffman, Clerk. By W. B. Beaizley, Deputy Clerk.

*In the Circuit Court of the United States, Ninth Circuit
in and for the Northern District of California.*

AT LAW.

THE UNITED STATES OF AMER-
ICA,

Plaintiff,

vs

WILLIAM J. BRYAN et al.,

Defendants.

No. 11,791.

Opinion on Demurrer.

Suit for the breach of certain conditions of a postmaster's bond, in failing to account and pay over to the Post-office Department the sum of \$9,399.88. Answer that the money was embezzled by a clerk who held his office under Civil Service Laws. Demurrer to answer. Demurrer sustained.

H. S. FOOTE, Esq., U. S. Attorney, and SAMUEL KNIGHT, Esq., Assistant U. S. Attorney.

JOHN T. CAREY, Esq., and Messrs. PAGE, McCUTCHEN & EELLS, Attorneys for Defendants.

MORROW, Circuit Judge.—This case comes up on a demurrer to the answer filed by defendants to complaint. The suit is brought by the United States against William J. Bryan, as principal, and Jesse D. Carr, Wm. Matthews, Wm. W. Stow, and Henry Miller, as sureties, for the alleged breach, by said defendants, of the conditions of a certain writing obligatory or bond signed and executed by them on July 14, 1886, a copy of which is annexed and made a part of the complaint. It is alleged that Wm. J. Bryan was the postmaster of San Francisco, in the State and Northern District of California, from and including the 21st of June, 1886, to and including the 30th of June, 1890; that, as such postmaster, he gave, as principal, with the remaining defendants as sureties, his official bond in the sum of \$300,000, for the faithful discharge of all the duties and trusts imposed upon him, either by law or the rules or regulations of the Postoffice Department, and faithfully, once in 3 months, and oftener, if thereto required, render accounts of his receipts and expenditures as postmaster to the Postoffice Department, in the manner and form prescribed by the Postmaster General, and should pay the balance of all moneys that should come to his hands from money orders issued by him and should safely keep all the public money collected by him or otherwise at any time placed in his possession and custody, till the same is ordered by the Postmaster General to be transferred or paid out; and should faithfully account

with the United States, in the manner directed by the said Postmaster General, for all money orders which he as postmaster, or as agent and depositary as aforesaid, should receive for the use and benefit of the said Postoffice Department. It is further alleged that said Wm. J. Bryan did not well and faithfully execute and discharge the duties and trusts imposed on him as such postmaster, either by law or the rules and regulations of the Postoffice Department, and did not once in 3 months, or oftener when required, faithfully or otherwise render an account of his receipts and expenditures as such postmaster to the Postoffice Department in the manner and form prescribed by the Postmaster General in his several instructions to postmasters, and did not pay the balance of all moneys that came into his hands in the manner prescribed by the Postmaster General of the United States for the time being otherwise. The particular breach of the conditions of the bond alleged is that said Wm. J. Bryan, while he was postmaster as aforesaid, did from time to time, in his official capacity as such postmaster, collect and receive divers sums of money on his money-order account, for which he neglected to render his account to the Postoffice Department in the manner and form or otherwise as prescribed by law, which sums of money so received on his money-order account, and not accounted for as aforesaid on the 30th day of June, 1890, amounted to the sum of \$9,399.88, no part of which sum has been paid. The answer filed to this complaint by the defendants admits the execution and delivery of the bond, for a breach of which the United States is suing; admits that William J. Bryan was postmaster as alleged; denies that he did not well or faithfully exercise or dis-

charge the duties or trusts imposed upon him as such postmaster in the particulars alleged in the complaint; admits, however, that on the 3d day of June, 1890, there was due the United States, upon the money-order account at the Postoffice of San Francisco, the sum of \$9,399.88, and that, at said date, or at any time since, said sum or any part thereof, has not been paid by said William J. Bryan. It is then averred, by way of defense to the action, that the said sum of \$9,399.88 was collected, embezzled, and converted to his own use by James S. Kennedy, a clerk in the postoffice at San Francisco, who had taken and held said office under the Civil Service Laws of the United States and the rules and regulations adopted pursuant to said law governing the appointment, promotion, and tenure of said office; that said Kennedy was subsequently indicted by a United States Grand Jury, in the District Court of the United States for the Northern District of California, for said offense, and was thereafter convicted of said crime. It is further averred that the defendant William J. Bryan, as postmaster aforesaid, used all the diligence and supervisory care over said clerk that a prudent, painstaking chief officer could over a subordinate officer, to protect the United States, and to secure the faithful discharge of his duties as such clerk, and had no knowledge or intimation of the misappropriation of said money order funds by said Kennedy until after said crime had been consummated; nor did said Bryan at any time receive, nor has he yet received said money-order funds or any part thereof so misappropriated, stolen, and embezzled by said Kennedy. Counsel for the United States have demurred to this answer, and our attention is directed to that part of the

answer which sets up, by way of defense, that the money which the defendant Bryan failed to account for was received and embezzled by a clerk who had been appointed and held his office under the Civil Service Laws of the United States. In other words, the question to be determined is, whether this is good matter of defense to the action brought by the United States for the alleged breach of defendant Bryan's official bond. The liability of a public officer upon his official bond is governed, to a large extent, by the terms of the bond itself, and the duties imposed upon him by law. The terms of the bond sued on in this case are absolute. No exceptions are provided for. The condition of the obligation was that he should faithfully discharge all the duties and trusts imposed on him, either by law or the rules and regulations of the Postoffice Department, etc., etc. The law, rules and regulations required him to account for all the moneys received by him as postmaster. It is admitted by the answer that he did not account for the sum sued for, viz, \$9,399.88, and the defense made is as above stated. Nowhere, either in the law or in the rules and regulations of the Postoffice Department, is there any provision releasing a postmaster from his liability to the Government where money-order funds, of which he had the possession, have been embezzled by a clerk who held his office as such under the Civil Service Laws of the United States. The Court certainly cannot import such an exception into the conditions of the bond. The leading case on the general subject of the liability of depositaries of public moneys on their official bonds is *United States v. Prescott et al.*, 3 How. 578. In that case, a receiver of public moneys had given a bond conditional, among other things, that he would "well, truly, and

faithfully keep safely all the public moneys collected by him," etc. Suit was brought by the United States against him and the sureties upon his official bond for a breach thereof in failing to pay certain public moneys, which he had received, as directed by the Secretary of the Treasury. As a defense to the suit, it was attempted to justify this default by setting up that the money had been stolen from him without his fault. There was a division of opinion among the Judges of the Circuit Court where the suit was instituted, and the case was certified up to the Supreme Court on this question, viz: "Does the felonious stealing, taking, and carrying away the public moneys in the custody of a receiver of public moneys, without any fault or negligence on his part, discharge him and his sureties, and is that a good and valid defense to an action on his official bond?" The Supreme Court held that it was not a good defense, and Mr. Justice McLean, in delivering the opinion of the Court, states very clearly and forcibly the reasons wherefor. The learned Justice said: "This is not a case of bailment, and consequently the law of bailment does not apply to it. The liability of the defendant arises out of his official bond, and principles which are founded upon public policy. . . . The obligation to keep safely the money is absolute, without any condition, expressed or implied, and nothing but the payment of it, when required, can discharge the bond. . . . Public policy requires that every depositary of the public money should be held to a strict accountability. Not only that he should exercise the highest degree of vigilance but that 'he should keep safely' the moneys which come to his hands. Any relaxation of this condi-

tion would open the door to frauds, which might be practiced with impunity. A depository would have nothing more to do than to lay his plans and arrange his proofs, so as to establish his loss, without laches on his part. Let such a principle be applied to our postmasters, collectors of the customs, receivers of public moneys, and others who receive more or less of the public funds, and what losses might not be anticipated by the public? No such principle has been recognized or admitted as a legal defense. And it is believed the instances are few, if indeed any can be found, where any relief has been given in such cases by the interposition of Congress. As every depository receives the office with a full knowledge of its responsibilities, he cannot, in case of loss, complain of hardship. He must stand by his bond, and meet the hazards which he voluntarily incurs."

The doctrine laid down in this case has been followed in the courts of the United States and in the State Courts in a large number of cases, among which may be cited the following: *United States v. Morgan*, 11 How. 154; *United States v. Dashiell*, 4 Wall. 182; *United States v. Keebler*, 9 Wall. 83; *Bevans v. United States*, 13 Wall. 56; *Boyden v. United States*, 13 Wall. 17; *United States v. Thomas*, 15 Wall. 338; *District Township of Taylor v. Morton*, 37 Iowa, 555; *District Township of Union v. Smith*, 38 Iowa, 9; 18 Am. Rep. 39; *State v. Moore*, 74 Mo. 413, 41 Am. Rep. 322; *Jefferson County v. Lineberger*, 3 Mon. 231, 35 Am. Rep. 462; *Lowry v. Polk County*, 51 Iowa, 50; 33 Am. Rep. 114; *State Township v. Powell*, 67 Mo. 935; 29 Am. Rep. 512; *Ward v. School District*, 10 Neb. 293; 35 Am. Rep. 477; *State v. Harper*, 6 Ohio St. 610; 67 Am. Dec. 363; *State v. Nevin*, 19 Nev. 162; 3 Am.

St. Rep. 873; *State v. Houston*, 78 Ala. 576, 56 Am. Rep. 59. See, also, Mechem on Public Officers, secs. 297-301, 912, where the general doctrine is well stated and all the authorities collated. It is true that in *United States v. Thomas*, supra, Mr. Justice Bradley, in delivering the opinion of the Court, questioned the correctness of some of the extreme views stated in some of the authorities referred to in *United States v. Prescott et al.* It was held that the act of a public enemy would be a good defense against a public officer and his sureties upon his official bond. In *United States v. Humason*, 6 Saw. 99, the Court permitted the defense that the officer who had possession of the money was on a steamship which was lost at sea, the officer drowned, and the sum of money, while being transported by said officer, without any fault or negligence of his, lost in the Pacific Ocean. The only exceptions, therefore, sanctioned by the authorities are the act of God or of a public enemy. As the present case does not come within either of the exceptions thus recognized, it is difficult to see how the defendants, though harsh it may seem to be, can escape the exacting measure of liability which the government, based upon principles of sound public policy, requires of those public officials who handle the public moneys. The rules and regulations of the Postoffice Department and various acts of Congress indicate to what strict measure of accountability postmasters are held. Section 4029, Revised Statutes, providing for the issuing of money orders, declares that "the postmaster and his sureties shall, in every case, be held accountable upon his official bond for all moneys received by him or his designated assistants or clerks in charge of stations, from the issue of

money orders, and for all moneys which may come into his or their hands, or be placed in his or their custody by reason of the transaction by them of money-order business." In the concluding portion of section 4 of the Act of March 3, 1883 (22 Stat. at Large, 528), it is provided: "That the salaries of postmasters, as fixed by law, shall be deemed and taken to be full compensation for the responsibility and risk incurred and for the personal services rendered by them as custodians of the money order and other funds of the Postoffice Department." In other words, the liability of a postmaster, upon his official bond, for the safe keeping and faithful accounting for the public moneys that come into his possession, is regarded by law as an absolute one. The mere fact, as is pleaded by way of defense in this case, that the clerk who embezzled the money held his office under the Civil Service Laws can make no difference. No such exception is made by the bond, and the Court cannot interpret it into the law as it now stands. Though the clerk held his position under the Civil Service Laws, he was nevertheless subject to the immediate supervision of the postmaster, and the latter was none the less responsible for his acts. (See Postal Rules and Regulations, sec. 464, edition of 1887). Moreover, I am of the opinion that, based upon principles of public policy, the postmaster should be held to an absolute liability for the acts of his subordinates, whether they be under Civil Service Rules or not. A full appreciation of this absolute liability will tend to greater vigilance and scrutiny on the part of postmasters over the acts of their subordinates, and will tend to preserve the efficiency of the postal service. Any other rule would lay the door wide open for frauds which could be practiced with impunity, to the demoralization of the service.

I am of the opinion that the demurrer to the answer should be sustained; and it is so ordered.

[Endorsed]: Filed August 23, 1897. Southard Hoffman, Clerk.

*In the Circuit Court of the United States, Ninth Circuit
Northern District of California.*

THE UNITED STATES OF AMERICA,

Plaintiff,

vs

WILLIAM J. BRYAN, JESSE D. CARR, WILLIAM MATTHEWS, HENRY MILLER, and WM. F. HER- RIN, A. N. DROWN, and VANDER- LYN STOW, Executors of the Last Will of W. W. Stow, Heretofore Sub- stituted herein as Defendants in the Place and Stead of W. W. Stow, De- ceased.

Defendants.

No. 11,791.

Petition for Writ of Error.

To the Honorable Judges of the United States Circuit Court of Appeals, Ninth Judicial Circuit:

Comes now the above-named defendants, and each of them, by their respective attorneys, and complain that in the record and proceedings had in said cause, and also in the rendition of the judgment in the above-entitled

cause in said United States Circuit Court, Ninth Circuit, Northern District of California, at term thereof, A.D. 1897, against said defendants, on the 30th day of November, 1897, manifest error hath happened to the great damage of said defendants.

Wherefore, said defendants, and each of them, pray for the allowance of a writ of error, and for an order fixing the amount of bond for a supersedeas in said cause, and for such other orders and process as may cause the same to be corrected by the said United States Circuit Court of Appeals for the Ninth Judicial District.

Dated this 4th day of January, A. D. 1898.

PAGE & EELLS and
JOHN T. CAREY,
Attys. for Defendants

Allowed:

WM. W. MORROW,
Judge.

[Endorsed]: Filed January 4, 1898. Southard Hoffman, Clerk. By W. B. Beazley, Dep. Clerk.

*In the Circuit Court of the United States, Ninth Circuit,
Northern District of California.*

THE UNITED STATES OF AMER-
ICA,

Plaintiff,

vs.

WILLIAM J. BRYAN, JESSE D.
CARR, WILLIAM MATTHEWS,
HENRY MILLER, and WM. F. HER-
RIN, A. N. DROWN, and VANDER-
LYN STOW, Executors of the Last
Will of W. W. Stow, Heretofore Sub-
stituted herein as Defendants in the
Place and Stead of W. W. Stow, De-
ceased.

Defendants.

Assignment of Errors.

Now come the above-named defendants, and each of them make, presents, and files the following assignment of errors to be annexed to the writ of error in this cause and returned therewith, upon which defendants, and each of them, as plaintiffs in error will rely in the Circuit Court of Appeals for the Ninth Circuit, for relief from the judgment rendered in said cause in the Court below.

I.

That the Court below erred in overruling the demurrer interposed by defendants and plaintiffs in error to the original complaint filed in said cause.

II.

That the Court below erred in sustaining the demurrer interposed by plaintiff and defendant in error to the original answer filed in said cause, and by holding and deciding that the facts stated in said answer filed were not sufficient to constitute a defense to the cause of action in plaintiff's complaint contained.

III.

That the Court below erred in sustaining the first ground of the demurrer interposed by plaintiff and defendant in error to the amended answer by defendants and plaintiffs in error, and by adjudging and deciding that said amended answer does not state facts sufficient to constitute a defense to the cause of action in the plaintiff's complaint contained.

IV.

That the Court below erred in sustaining the second ground of the demurrer interposed by plaintiff and defendant in error to the amended answer filed as aforesaid in said cause, and by deciding and adjudging that said amended answer does not state facts sufficient to constitute a counterclaim to the cause of action in plaintiff's complaint contained.

V.

That the Court below erred in rendering judgment against defendants in said cause upon the pleadings in

said cause, and that said judgment is contrary to law and the facts as stated in the pleadings in said cause.

Defendants and plaintiffs in error pray that the judgment of the Court below be reversed, and such directions be given that full force and efficacy may enure to defendants by reason of the defense set up in their amended answer filed in said cause.

PAGE & EELLS and

JOHN T. CAREY,

Att'ys. for Defendants and Plaintiffs in Error.

[Endorsed.] Filed January 4, 1898. Southard Hoffman, Clerk . By W. B. Beazley, Deputy Clerk.

*In the Circuit Court of the United States, Ninth Circuit,
Northern District of California.*

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILLIAM J. BRYAN et al.,

Defendants.

No. 11,791.

Order Fixing Bond on Writ of Error.

This cause came on for hearing upon the application of defendants and plaintiffs in error to the Court to fix the amount of the bond to be given by said defendants and plaintiffs in error, for appeal of this cause and for supersedeas, and the Court upon consideration thereof fix-

ed the amount of the bond to be given by said defendants and plaintiffs in error at the sum of twenty-six thousand dollars.

WM. W. MORROW,
Circuit Judge.

[Endorsed]: Filed January 4, 1898. Southard Hoffman, Clerk. By W. B. Beazley, Deputy Clerk.

*In the Circuit Court of the United States, Ninth Circuit,
Northern District of California.*

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILLIAM J. BRYAN, JESSE D. CARR, WILLIAM MATTHEWS, WILLIAM W. STOW, and HENRY MILLER,

Defendants.

No. 11,791.

Clerk's Certificate to Transcript.

I, Southard Hoffman, clerk of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California, do hereby certify the foregoing sixty-six (66) written pages, numbered from 1 to 66, inclusive, to be a full, true, and correct copy of the record and proceedings in the above and

therein entitled cause, as the same remains of record and on file in the office of the clerk of said court, and that the same constitutes the return to the annexed writ of error.

I, further certify that the cost of the foregoing return to writ of error is \$37.20, and that said amount was paid by William J. Bryan, one of the plaintiffs in error herein.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court, this 28th day of January, A. D. 1898.

[Seal]

SOUTHARD HOFFMAN,
Clerk United States Circuit Court, Northern District of
California.

Writ of Error.

UNITED STATES OF AMERICA—ss.

The President of the United States, to the Honorable, the Judges of the Circuit Court of the United States for the Ninth Circuit, Northern District of California, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court, before you, or some of you, between The United States of America, plaintiff and defendant in error, and William J. Bryan, Jesse D. Carr, William Matthews, Henry Miller, and William F. Herrin, A. N. Drown, and Vanderlynn Stow, executors of the last will of W. W. Stow, heretofore substituted herein as defendants in the place and stead of W. W. Stow, deceased, de-

defendants and plaintiffs in error, a manifest error hath happened, to the great damage of the said William J. Bryan, Jesse D. Carr, William Matthews, Henry Miller, and Wm. F. Herrin, A. N. Drown, and Vanderlyn Stow, executors of the last will of W. W. Stow, heretofore substituted herein as defendants in the place and stead of W. W. Stow, deceased, plaintiffs in error, as by their complaint appears.

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the city of San Francisco, in the State of California, on the third day of February next, in the said Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the United States, the 4th day of January, in the year of our Lord one thousand eight hundred and ninety-eight.

[Seal]

SOUTHARD HOFFMAN,

Clerk of the Circuit Court of the United States, for the Ninth Circuit, Northern District of California.

Allowed by:

WM. W. MORROW,

Judge.

Service of within writ and receipt of a copy thereof is hereby admitted this 4th day of January, 1898.

SAMUEL KNIGHT,
Asst. U. S. Attorney for Plaintiff.

The answer of the Judges of the Circuit Court of the United States of the Ninth Judicial Circuit, in and for the Northern District of California.

The record and all proceedings of the plaint whereof mention is within made, with all things touching the same, we certify under the seal of our said Court, to the United States Circuit Court of Appeals for the Ninth Circuit, within mentioned at the day and place within contained, in a certain schedule to this writ annexed as within we are commanded.

By the Court.

[Seal]

SOUTHARD HOFFMAN,
Clerk.

[Endorsed]: Filed January 4, 1898. Southard Hoffman, Clerk. By W. B. Beaizley, Deputy Clerk.

[Endorsed]: No. 443. In the United States Circuit Court of Appeals for the Ninth Circuit. William J. Bryan, Jesse D. Carr, William Matthews, Henry Miller, and Wm. F. Herrin, A. N. Drown and Vanderlyn Stow, as Executors of the Last Will of W. W. Stow, Deceased, Plaintiffs in Error, v. The United States of America, De-

pendant in Error. Transcript of Record. Error to the Circuit Court of the United States for the Northern District of California.

Filed April 1st, 1898.

F. D. MONCKTON,
Clerk.

By Meredith Sawyer,
Deputy Clerk.